IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3602 of 1987

For Approval and Signature:

Hon'ble MR.JUSTICE RAVI R. TRIPATHI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

R.A. JADAV

Versus

MANAGING DIRECTOR

Appearance:

Mr.Devang Trivedi for Mr.K.V. Shelat for the petitioner.

Respondents nos.1, 3 & 4 served.

Mr.J.D. Ajmera for respondent no.2.

CORAM : MR.JUSTICE RAVI R. TRIPATHI

Date of decision: 23/02/2001

ORAL JUDGEMENT

The present petition is filed by the petitioner who was appointed in the service as a clerk in 1969 in the respondent Bank. The petitioner came to be dismissed

from the Bank's services with effect from 24.12.1986 vide disciplinary authority's letter no.RM/ AHD/ DPC/ CPM/ CON/ 107 dated 19.12.1986, a copy of which is produced at Annexure 'a' to this petition. The petitioner preferred an appeal against the said order of dismissal before the appellate authority who has also dismissed the appeal by an order dated 1.5.1987 and confirmed the order of dismissal. A copy of the order of the appellate authority is produced at Annexure 'B' to this petition.

2. The charges levelled against the petitioner were like the petitioner fraudulently attempted to withdraw an amount of Rs.2000/-, from the Bank account no.3188 and similar other charges. A copy of charge sheet is produced at Annexure 'D' to the petition, wherein the charges are set out as under :

"(a) That you fraudulently withdrew Rs.3800/-, on 13.2.84 from SB a/c no.3188 in collusion with Shri C.R. Kahar, Daftari at Naroda Road, Ahmedabad Branch.

(b) That on 19.3.84 you fraudulently withdrew Rs.1200/-, from SB a/c no.3188.

(c) That again on 5.4.1984 you fraudulently withdrew Rs.590/-, from SB a/c no.3188.

(d) That you made an attempt to fraudulently withdraw Rs.2000/-, from SB a/c no.3188 on 5.4.84.

(e) That you torn the voucher dt.5.4.84 of Rs.2000/- into pieces at the Banking premises and thereby tampered with the Bank's record, with an intention to destroy the evidence."

3. An Inquiry Officer was appointed to inquire into the charges levelled against the petitioner, who examined the witnesses. The Inquiry Officer completed the inquiry and thereafter a show cause notice dated 19.11.1986 was issued to the petitioner to which the petitioner filed a reply. The show cause notice was to the effect that as to why the petitioner should not be dismissed from the Bank's services. A copy of the show cause notice is at Annexure 'F' to the petition and reply thereto dated 1.12.1986 is at Annexure 'G' to the petition.

4. Learned advocate appearing for the petitioner submitted that the order of dismissal duly confirmed by the appellate authority is challenged on the following

grounds:

(i) That the respondent Bank has not produced a report of the hand writing expert whereby it could have been stated that the petitioner had filled in the relative withdrawal forms of different amounts in his own hand writing as alleged in the charge sheet. Therefore, it ought to have been held that the Bank has not been able to establish the signature on the face of the withdrawal forms in the name of the account holder as having been fraudulently done by the petitioner.

The Inquiry Officer had considered this aspect in detail in his inquiry report and has come to the conclusion that,

"(a) It is established through the deposition of Shri Chatterjee that Shri R.A. Jadav had come with the ledger and passed withdrawals along with pass book for Rs.2,000.00 in the account no.3188. Shri Chatterjee passed the withdrawal in the ledger, however, he asked Shri Jadav why second payment has come on the same day as in the morning also one payment was made in this account and that time Shri Jadav had brought the ledger. .. .."

The Inquiry Officer discussed in detail as to how it was held that the withdrawal forms were filled in by the petitioner.

5. It was next contended on behalf of the petitioner that the petitioner had contended in the appeal memo before the appellate authority that the petitioner was not supplied with the copy of the complaint, names of witnesses, statements of the complainant and witnesses till the date of filing of the appeal. The appellate authority has considered the appeal of the petitioner and has passed an order dated 1.5.1987, wherein after taking into consideration the whole matter and perusal of the relevant papers including the charge sheet, defence statement, proceedings, findings, the appellate authority has found no substance in the appeal and also did not find any reason for deferring with the decision taken by the disciplinary authority.

6. It was next contended that the inquiry officer has relied upon the preliminary inquiry report submitted by one Shri S.S. Mehta and that the Inquiry Officer also relied upon the statements of witnesses, which were recorded during the course of the preliminary inquiry and

as the said statements were not supplied to the petitioner the same has resulted into violation of the principles of natural justice and on that ground alone the present petition is required to be allowed and the order of dismissal passed against the petitioner is required to be quashed and set aside. In support of this submission, learned advocate for the petitioner relied upon the following authorities :

(i) State of Punjab v. Dewan Chuni Lal, AIR 1970 SC 2086.

(ii) State of Uttar Pradesh v. Mohd. Sharif, AIR 1982 SC 937.

(iii) Kashinath Dikshita v. Union of India and others, AIR 1986 SC 2118.

(iv) Balbir Vasisht v. National Textile Corporation, 2000 (3) GLR 2191.

All these authorities are on the point that in case the documents which are relied upon are not supplied it will amount to violation of principles of natural justice and will vitiate the proceedings. In the present case on perusal of the Inquiry Officer's report it is clear that the Inquiry Officer had relied upon the evidence of Shri Vikramsinh Chavda, the account holder from whose account the amount was withdrawn and on the evidence of one Shri Jasuji, the person who accompanied the petitioner to the place of the account holder in a jeep in an attempt to persuade the account holder not to pursue the matter on the condition that the petitioner is reimbursing the amount withdrawn from the account of Shri Vikramsinh. It is admitted position that the petitioner was given an opportunity to cross examine both these persons. In light of these things, which are recorded in terms in the Inquiry Officer's report, I do not find any substance in the aforesaid contentions that there was any violation of principles of natural justice. Therefore, the aforesaid authorities are not discussed in detail as this Court is of the opinion that those authorities have no application to the facts of the present case.

7. It was also contended that the account holder and Jasuji Vaghela were not examined by the Inquiry Officer and that only their statements made before the officers who conducted preliminary inquiry were relied upon by the Inquiry Officer. This contention is without any merit inasmuch as it is clear from the perusal of the Inquiry Officer's report that not only these two witnesses were

examined but even the petitioner was given an opportunity of cross examining these two witnesses.

8. It is also contended that the persons named in the appeal memo, i.e. S/Shri D.R. Makwana, N.V. Parmar, C.R. Kahar, S.D. Shah and S.K. Chatterjee have not stated in the statement before the Inquiry officer that the petitioner was involved in any of the aforesaid withdrawal transactions. It is too bald a statement and the same cannot be accepted in light of the contents of the Inquiry Officer's report.

Learned advocate for the petitioner is not able to point out as to whether the Inquiry Officer had any animosity with the petitioner and for that reason he was biassed against the petitioner. In absence of any such allegation there is no reason to disbelieve the report of the Inquiry Officer.

9. It was also contended by learned advocate for the petitioner that Shri C.R. Kahar, who was alleged to have been involved in the same offence with the petitioner is not punished and he is allowed to go scot-free, which shows that the respondent bank has acted in arbitrary manner in picking and choosing the petitioner alone and punish him with the drastic penalty of dismissal.

10. Mr.Ajmera, learned advocate submitted that so far as Shri C.R. Kahar is concerned it was found that he was only a carrier who carries documents from one table to other in the Bank premises, against whom only charge (a) was proved while charge (b) was not proved and therefore, he was given punishment of warning.

11. Learned advocate then submitted that assuming without admitting that the petitioner is guilty of the charges levelled against him, the punishment awarded is too harsh a punishment and that this Court should interfere with the quantum of punishment. Learned advocate for this purpose relied upon the following decisions of the Honorable Supreme Court:

(i) (1997) 11 SCC 405.
(ii) (1998) 2 SCC 407.
(iii) (198) 3 SCC 192.

In all these case, the Apex Court has reduced penalty of dismissal to compulsory retirement by giving reasons for the same. In the present case the petitioner is a Bank employee and he is otherwise supposed to be a trustee of the public money, i.e. the money of the members of

public, who deposited the amounts in the Bank. Looking to the modus operandi of the petitioner, who having found that a particular Bank account has remained inoperative for some period, started withdrawing money from that account. Not only that after he was found to have been indulging in such activity the petitioner had an audacity to approach the account holder and to offer that in case the account holder is ready, the petitioner is ready to reimburse the amount involved in such activity/ withdrawal. Looking to the peculiar facts of the case, this Court is of the opinion that in such cases there cannot be any justification for reduction of punishment and this Court will not be right in exercising its discretion under Article 226 of the Constitution of India. It will not be out of place to mention that Article 226 is not meant for such persons serving in the Bank, indulging in such activities and then praying for mercy before Courts.

12. On the other hand, learned advocate for the respondent Bank submitted that the contentions raised by learned advocate for the petitioner are without any substance inasmuch as preliminary inquiry was conducted so as to ascertain the preliminary facts of the case. If the Bank had not conducted any such preliminary inquiry the Bank would have been alleged to have acted in haste or without sufficient material. The submission made by learned advocate for the Bank has force and the same is required to be accepted. The Bank had not committed any irregularity or illegality in conducting preliminary inquiry.

13. In view of the aforesaid discussion, this Court find no substance in the petition. The same is dismissed. Rule is discharged with no order as to costs.

(Ravi R. Tripathi, J.)

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